Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1513

MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Printed by Authority of the State of Illinois—12-1-76—80

APPEAL DOCKETED APRIL 19, 1976
PROBABLE JURISDICTION NOTED OCTOBER 4, 1976

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In The

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MICHAEL J. HOWLETT, SECRETARY OF STATE OF ILLINOIS,

Appellant,

vs.

DENNIS N. LOVE,

Appellee.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

6-5-75 — Filed complaint and copies.

6-6-75 — Filed plaintiff's notice of motion; Motion for temporary restraining order; Affidavit of Dennis N. Love in support of motion for temporary restraining order; Filed memorandum in support of plaintiff's motion for temporary restraining order.

6-6-75 — Filed plaintiff's notice of motion; Plaintiff's motion to convene three Judge Court.

6-9-75 — Enter order dated 6-6-75; Motion for temporary restraining order is heard and granted until further order of Court. Temporary restraining order is conditioned that plaintiff apply for hardship license, limited as to business purposes only and have liability insurance coverage. Motion to convene a three judge court is granted. McGarr, J.

6-10-75 — Filed order designating three-judge Court pursuant to Title 28 USC § 2284 of Hon. Philip W. Tone, Hon.. Richard W. McLaren and Hon. Frank J. McGarr.—Thomas E. Fairchild, Chief Judge of 7th Circuit.

6-12-75 — Filed plaintiff's motion for preliminary injunction; Filed Memorandum in support of the maintenance of the temporary restraining order or alternatively a memorandum in support of the motion for preliminary injunction.

6-13-75 — Enter order dated 6-12-75; Enter order extending temporary restraining order to July 2, 1975. McGarr, J.

7-14-75 — Filed defendant's notice of filing Memorandum in support of defendant's motion to dismiss and two copies; Filed defendant's notice of filing; Motion to dismiss and two copies.

8-8-75 — Filed plaintiff Love's motion for summary judgment and two copies; Filed plaintiff's memorandum in support of plaintiff's motion for summary judgment and in opposition to the defendant's motion to dismiss.

9-22-75 — Filed reply memorandum in support of defendant Howlett's motion to dismiss and in opposition to plaintiff's motion for summary judgment.

10-2-75 — Filed plaintiff's reply to defendant's brief in opposition to plaintiff's motion for summary judgment and 2 copies.

10-23-75 — Filed Plaintiffs' Motion for class action certification; Filed Plaintiffs' Memorandum for class action certification and determination pursuant to Rule 23 of the F.R.C.P.

1-21-75 — Enter order dated January 20, 1976:
Pursuant to Memorandum Opinion and order entered this day, Plaintiff's motion for Summary Judgment is granted as to Count I of the Complaint. Count II is rendered moot by this decision—Draft—Tone, J., McLaren, J. and McGarr, J.

2-18-76 — Filed Defendant's notice of Appeal to the Supreme Court of the United States, with Notice of filing and Proof of Service of Notice of Appeal.

4-14-76 — Enter order dated April 13, 1976.
Enter preliminary injunction nunc pro tunc as of January 20, 1976. Draft—McGarr, Tone, J. USCA.

10-12-76 — Filed certified copy of the order of the Supreme Court of the United States noting probable jurisdiction in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Filed June 5, 1975

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75C 1821

COMPLAINT

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated without a hearing prior to revocation. This is also an action to declare the prescribed practice to be in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. Jurisdiction is conferred upon the court by Title 28 Section 1343 of the United States Code, providing for jurisdiction over claims arising under Title 42, Section 1983 and the Fourteenth Amendment to the United States Constitution. Jurisdiction is also conferred upon this Court under Title 28, Sections 1331, 2201 and 2202

of the United States Code. This controversy exceeds the amount of $10,000 exclusive of interest and costs. An application is hereby made for the convening of a three-judge federal district court to hear and determine this matter pursuant to 28 U.S.C. 2281 and 2284.

3. The plaintiff Dennis N. Love is a resident of Chicago, Illinois, presently employed as a truck driver, whose license to operate a motor vehicle has been revoked effective June 6, 1975 pursuant to the Illinois Motor Vehicle Code, (hereinafter *Code*) Chapter 95½, Illinois Revised Statutes, Section 6-206(a)(3), a copy of which is attached hereto as exhibit A.

4. The defendant Michael J. Howlett is the Secretary of State of the State of Illinois and is authorized, pursuant to Chapter two of the *Code*, to issue, suspend and revoke operator licenses in the State of Illinois.

5. The defendant Howlett derives his authority to suspend or revoke an operator's license without a preliminary hearing pursuant to 95½ I.R.S. 6-206(a).

6. Dennis N. Love brings this action on his own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons licensed to operate motor vehicles by the State of Illinois and whose licenses are subject to revocation pursuant to 95½ I.R.S. 6-206(a)(3). The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of the named plaintiff are typical of the claims and defenses of the class; the named plaintiffs will fairly and adequately protect the interests of the class; the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants; defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and questions of law and

fact common to class members predominate over questions affecting individual members, and a class action is superior to other available methods for the fair and efficient methods of adjudication.

7. On or about June 3, 1975, the plaintiff received, without prior expectation or notice, a statement from the Office of the Secretary of State, pursuant to 95½ I.R.S. 6-209, that his license to operate a motor vehicle had been revoked effective June 6, 1975, a copy of the said statement being attached hereto as exhibit B. The said notice was postmarked June 2, 1975.

8. 95½ I.R.S. 6-206(a)(3) violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution in that it denied the plaintiff and others similarly situated a hearing prior to the revocation action of the defendant.

9. The plaintiffs have no adequate remedy at law.

WHEREFORE the plaintiff on his own behalf and on behalf of all persons similarly situated, prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. That the Court enter an injunction to enjoin the enforcement of 95½ I.R.S. 6-206(a)(3) by the defendant Secretary of State, his agents and his successors in office.

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

COUNT II

1. This is an action for injunctive relief wherein the plaintiff Dennis N. Love seeks to enjoin the defendant Michael J. Howlett from revoking the driver's license of the plaintiff and others similarly situated pursuant to 95½ I.R.S. 6-206(a)(3), the said statute being vague and failing generally to give to the plaintiff and others similarly situated adequate notice of the standards used by the defendant Secretary of State when making the determination to suspend or revoke, all in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2-7. Plaintiff realleges paragraphs two through seven of Count I of the Complaint as paragraphs two through seven of Count II of the Complaint.

8. The plaintiff has no adequate remedy at law.

WHEREFORE the plaintiff prays as follows:

1. That a three-judge court be convened pursuant to 28 U.S.C. 2281, 2284.

2. That the Court enter a declaratory judgment declaring 95½ I.R.S. 6-206(a)(3) to be violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. That the Court enter an injunction enjoining the defendant Secretary of State, his agents and his successors in office from suspending or revoking operator licenses pursuant to 95½ I.R.S. 6-206(a)(3).

4. That the Court award appropriate damages.

5. That the Court enter such appropriate relief as may be fit and proper.

/s/ Alan M. Freedman
/s/ Richard J. Hess
/s/ Allen L. Ray

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Filed June 6, 1975
[caption omitted in printing]

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Dennis N. Love, being first duly sworn, does depose and state as follows:

1. I am the plaintiff in the above captioned case. I have knowledge of the facts contained herein and could testify competently thereto if called as a witness.

2. I reside at 740 East 68th Street, Chicago, Illinois with my wife Kathy Love and one child, Eric Love.

3. My wife is presently pregnant.

4. I am 25 years of age and have been licensed to operate a motor vehilce since 1968.

5. My first and only employment upon being discharged from the United States Army has been with the Thompson-Starr Route Company as a truck driver.

6. My education ended after the second year of high school and I have no training in any other type of employment which would enable me to support my family.

7. If my driver's license is revoked, I will be unable to continue my employment as a truck driver.

8. The loss of my driver's license will cause great hardship and will threaten me with immediate and future loss of a livelihood.

/s/ Dennis N. Love

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Filed July 14, 1975

EXHIBIT TO DEFENDANT'S MOTION TO DISMISS

Certificate Nº DL- 7123

STATE OF ILLINOIS
OFFICE OF
THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, MICHAEL J. HOWLETT, Secretary of State of the State of Illinois, do hereby certify that the following, and hereto attached, is a true photostatic copy of complete file from the files in the Drivers License Division relative to the driving privileges of Dennis N. Love, 5322 South State, Apt. 208, Chicago, Illinois, File No: L100-1744-9207. I FURTHER CERTIFY the records show the said, Dennis N. Love, does have a valid Temporary Restricted Driving Permit as of this date persuant to the Federal Court Order per Judge Mc Garr.

the original of which is now on file and a matter of record in this office

In Testimony Wherrof, I hereto set my hand, and cause to be affixed the Great Seal of the State of Illinois

Done at the City of Springfield this 25th day of June AD 19 75.

Michael J Howlett
SECRETARY OF STATE

L300-1744-9207 03600
07-21-49 M 06-28-75 75-06-24

THE FOLLOWING INFORMATION IS FURNISHED FROM THE DRIVERS LICENSE FILE OF THE PERSON IDENTIFIED ABOVE, PURSUANT TO THE PROVISIONS OF THE ILLINOIS VEHICLE CODE.

DENNIS N LOVE
5322 S STATE APT 208
CHICAGO

L300-1744-9207

DI	BIRTH DATE
	07 21 49

SEX	HEIGHT	WEIGHT	HAIR	EYES
M	6 01	185	BLK	BRN

TYPE	ISSUE DATE	CLASS	RESTRICTION	EXPIRATION DATE
1	06 26 74	D *	0-0-0	07 21 77

Valid Temporary Restricted Driving Permit

TYPE OF ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO	TERMINATION DATE OF SUSPENSION	STOP IN EFFECT
96	04 21 68	05 21 68	1 103 00	935489		
99	09 15 68	10 17 68	7 202 00	5831989		
99	08 20 68	10 10 68	7 218 00	5824431		
99	08 14 69	08 27 69	1 049 01	6871409		
03		11 04 69	6 206 A2		01 04 70	NO
73		01 04 70	6 206 A2			
94	11 12 69	01 29 70	6 210 01	6756794		
03		03 17 70	6 303 B0		05 17 70	NO
73		05 17 70	6 303 B0		05 17 70	
14		04 05 74		118019		
99	08 24 74	11 21 74	1 0601 03	45925		
99	08 16 74	09 06 74	8 0601 07	265516		
60		03 27 75				
99	02 12 75	03 31 75	1 0601 03	2741482		
02		06 06 75	6 206 A3			YES
47		06 06 75				
10		06 17 75		35		

This is to certify that as the records of the Secretary of State a careful search of my records, the information set out hereto is a true and accurate copy of the captioned individual's driving record, identified by drivers license number, and it covers all such matters reported as a result of any driver control action taken.

Michael J. Howlett

Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

EXPLANATION OF CODES AND COLUMN HEADINGS

Although most of the column headings appearing at the top of the abstract are self-explanatory, two need clarification.

D.E.: "Y" indicates driver education instruction reported to Secretary of State.

TYPE: This column indicates the type of license:

1. Drivers License
2. Duplicate Drivers License
3. Corrected Drivers License
4. Instruction Permit
5. Duplicate Instruction Permit
6. Corrected Instruction Permit

TYPE ACTION . . . .

01 MANDATORY REVOCATION
02 DISCRETIONARY REVOCATION
03 DISCRETIONARY SUSPENSION
04 SAFETY RESPONSIBILITY SUSPENSION
05 FINANCIAL RESPONSIBILITY SUSPENSION
06 UNSATISFIED JUDGMENT SUSPENSION
07 REVOCATION 6-205 (B) OR 6A-205 (B)
08 CANCELLATION OF LICENSE
09 MANDATORY SUSPENSION
10 AMENDED ORDER ISSUED
12 CITED FOR EXAMINATION
13 SIGNED AFFIDAVIT FOR LOST OR STOLEN LICENSE, LIEU OF BAIL, ETC.
14 COLLISION INVOLVING PROPERTY DAMAGE
16 COLLISION INVOLVING FATAL INJURY
19 COLLISION INVOLVING PERSONAL INJURY
21 TERMINATION OF SAFETY RESPONSIBILITY SUSPENSION
22 "STOP" PLACED IN FILE
27 LICENSE SURRENDERED TO FOREIGN STATE AND RETURNED TO ILLINOIS
28 REPORT [illegible] ACCIDENT
32 DENIAL OF RESTRICTED DRIVING PERMIT
33 DENIAL OF LICENSE
34 EXTENSION OF REVOCATION
35 EXTENSION OF SUSPENSION
40 FORMAL HEARING
41 HEARING AND REVIEW
47 F.R. FUTURE PROOF REQUIRED
48 DRIVER TRAINING INSTRUCTOR OR SCHOOL BUS DRIVER
50 INFORMAL CONFERENCE HELD
52 SHOW CAUSE HEARING . . . RECOMMEND ACTION
53 SHOW CAUSE HEARING . . . RECOMMEND NO ACTION
55 6-111 OR 6A-111 CONFERENCE
60 WARNING LETTER ISSUED
71 PROBATIONARY PERMIT ISSUED
72 REINSTATEMENT AFTER EXTENDED REVOCATION
73 TERMINATION OF SUSPENSION
74 REINSTATEMENT AFTER REVOCATION
75 TERMINATION OF EXTENDED SUSPENSION
76 TERMINATION OF FINANCIAL RESPONSIBILITY SUSPENSION
77 TERMINATION OF UNSATISFIED JUDGMENT SUSPENSION
78 RESTRICTED DRIVING PERMIT ISSUED
84 F.R. FUTURE PROOF FILINGS COMPLETED
93 IMMEDIATE ACTION BOND FORFEITURE (NO POINTS ASSIGNED)
94 IMMEDIATE ACTION CONVICTION (NO POINTS ASSIGNED)
95 BOND FORFEITURE (NO POINTS ASSIGNED)
96 CONVICTION (NO POINTS ASSIGNED)
97 BOND FORFEITURE (POINTS ASSIGNED)
99 CONVICTION (POINTS ASSIGNED)

OTHER CODES . . .

DATE OF ARREST: The column with this heading refers to the date the traffic ticket was issued.

DATE OF ACTION. The column with this heading refers to the date the action was taken; e.g., the conviction date in the case of a traffic law violation, rather than the date of the offense. There is one exception. . . in the case of a discretionary suspension (Type Action 03), the date which the suspension becomes effective is indicated, instead of the date which the order was entered and filed.

DESCRIPTION OF ACTION:

DESCRIPTION OF OFFENSE: This column describes the type or nature of a traffic offense. The code which is used here is composed of the Chapter and Section number of the Illinois Vehicle Code, Uniform Act Regulating Traffic on Highways or the Municipal Code of the City of Chicago. For example, offense code 048.00 refers to Section 48 of the Uniform Act Regulating Traffic On Highways. . . "Reckless Driving". The parallel offense of the Illinois Vehicle Code will appear as 105-03.00

The single digit code which precedes the Section number refers to the identity of the law. . . 1. Illinois Vehicle Code or Uniform Act Regulating Traffic on Highways. . . 2. Local Ordinance (other than Chicago) . . . 3. Illinois Tollway Laws and Regulations . . . 4. Penal Code (felony). . . . 6. The Illinois Driver Licensing Law. . . 7. Chicago Municipal Ordinance . . . 8. Foreign State and Other.

STATUTORY AUTHORITY: The code used here refers to the chapter and section of the Illinois Vehicle Code or the Illinois Vehicle Law which provides the authority for the action taken; e.g., 6-205 A2 and 6A-205 A2 is a mandatory revocation of a license after conviction of operating a motor vehicle while under the influence of intoxicating liquor.

ACCIDENT OR DOCKET NUMBER: This column contains the docket number or arrest ticket number (often the same) of a specific traffic offense. It also contains the motor vehicle accident number which is assigned to each case by the Safety Responsibility Section of the Highway Division.

TERMINATION OF SUSPENSION: This column indicates the termination date of the discretionary suspension. In some cases the length of the suspension is indicated by the number of months, such as "6".

STOP IN EFFECT: This column indicates if a suspension or revocation is in effect.

REQ 89 DL EDPM 56 13 OCT 72

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

Filed August 8, 1976

EXHIBITS TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

EXHIBIT C

STATE OF ILLINOIS **OFFICE OF THE SECRETARY OF STATE** SPRINGFIELD 02

NOTICE OF REVOCATION

Dennis N. Love
5322 South State, Apartment #208
Chicago 60609
L100-1744-9207

	Mo.	Day	Yr.
Date of Revocation	06	06	75
License Number	L100-1744-9207		
Date of Conviction	06-20-75		
Authority: Section *Illinois Vehicle Code*	6-206(a)3		

07-21-49

Pursuant to the provisions of Section 6-209 of the Illinois Vehicle Code, YOU ARE HEREBY NOTIFIED that an Order revoking your Illinois drivers license or permit, your privilege to operate a motor vehicle, and your privilege of obtaining a license within this State, has been entered on the date shown above.

This action has been taken as a result of: Your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws.

YOUR LICENSE MUST BE SURRENDERED IMMEDIATELY—SEE REVERSE

William F. Logan, Administrator
Drivers License Division

[Notice of Revocation — reverse side]

IMPORTANT—READ CAREFULLY

1. All drivers licenses and permits must be immediately surrendered to the Secretary of State as required by Sections 6-209 and 6-301 of the Illinois Vehicle Code. Please use the enclosed return envelope. (Do not return this notice with your license. Keep for your records.)

2. The operation of motor vehicles by you after the effective date of this notice is *not permitted* and is a VIOLATION OF Section 6-210 of the Illinois Vehicle Code. Conviction of such operation is punishable by imprisonment for not more than one year and in addition a fine may be imposed not to exceed $1,000.

3. Any person whose license or permit has been revoked under the provisions of Section 6-206 of the Illinois Vehicle Code shall be afforded an opportunity for a hearing, upon written request to the Secretary of State. *If you live in Chicago or any part of Cook County*, write to the Secretary of State in care of the motor vehicle facility whose Chicago address is listed on the accompanying colored card.

4. A license which has been revoked cannot be renewed or restored. However, application for a new license may be made after the expiration of one year from the date of revocation, or upon removal of cause.

DL DC-R2.16
REQ. 249
AUG. '73

EXHIBIT D

AFFIDAVIT

I, Alan M. Freedman, attorney at law, on oath state that I represented the following persons at administrative hearings before a Hearings Officer of the Illinois Secretary of State, Drivers License Division. These hearings were held to review the propriety of the Secretary's revocation of each party's Illinois drivers license. In every case, a minimum of four months elapsed between the filing of a written request for a hearing and the rendering of a final administrative decision. In one instance, the appellant has been waiting more than nine months for a determination of her appeal.

Mr. William Smith
4362 S. Wentworth Ave.
Chicago, Illinois 60609
D.L. #: S 530-9202-0181
Hearing requested: 3-1-73
Hearing held: 3-21-73
Decision rendered: 7-6-73
Results: Revocation lifted

Mr. Lee Simmons
5952 S. Morgan St.
Chicago, Illinois 60621
D.L. #: S 552-5200-3345
Hearing requested: 3-13-75
Hearing held: 4-4-73
Decision rendered: 6-28-73
Results: Revocation lifted

Mr. Daniel A. Shelly
406 E. 109th St.
Chicago, Illinois 60628
D.L. #: S 400-1611-4284
Hearing requested: 7-13-73
Hearing held: 8-2-73
Decision rendered: 1-8-74
Results: Revocation lifted

Ms. Verlenia M. Harris
942 E. 76th St.
Chicago, Illinois 60619
D.L. #: H 620-8734-5760
Hearing requested: 10-14-74
Hearing held: 12-3-74
Decision rendered: none to date

/s/ Alan M. Freedman
Alan M. Freedman

[Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

Before TONE, *Circuit Judge*, and MCLAREN and MCGARR, *District Judges.*

MEMORANDUM OPINION AND ORDER

MCGARR, *District Judge.* The plaintiff in this suit raises a substantial issue as to the constitutionality of Ill. Rev. Stat. Ch. 95½ § 6-206(a)(3), and seeks to enjoin the enforcement thereof. Accordingly, a three-judge court has been convened pursuant to 28 U.S.C. §§ 2281 and 2284. The following is the opinion of that court.

The plaintiff, Dennis N. Love, seeks to enjoin the defendant, Michael J. Howlett, from revoking the driver's license of the plaintiff and others similarly situated, without a hearing prior to revocaton. This practice is alleged to be in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution

of the United States. Plaintiff additionally states a claim under 42 U.S.C. § 1983. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343, 1331, 2201 and 2202.

The defendant has filed a motion to dismiss supported by material extraneous to the pleadings. This motion will be taken as a motion for summary judgement under Rule 12(b), Fed.R.Civ.P. The plaintiff has filed a cross motion for summary judgment. The parties have briefed the issues and their motions will be considered simultaneously.

The facts in this particular action are as follows. The plaintiff, a truck driver, was issued citations for violations of traffic laws on three occasions pertinent to this suit. Prior to these citations, his license had been suspended for a time on March 17, 1970, and on October 22, 1969. He was convicted on the first citation on September 6, 1974. He was convicted on the second on November 21, 9174. On March 27, 1975, plaintiff was notified by letter that a further conviction would result in loss of his driving privileges. The third citation had been issued to the plaintiff on February 12, 1975, and his subsequent conviction occurred on March 31, 1975.

On June 3, 1975, plaintiff received a notice from the office of the Secretary of State that his license to operate a motor vehicle had been revoked effective June 6, 1975. The revocation was effected pursuant to the statute in issue here, Ill.Rev.Stat. Ch. 95½ 6-206(a)(3). The reason for revocation stated on the notice was plaintiff's "having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates disrespect for the traffic laws."

On June 6, 1975, upon application by the plaintiff, this court issued a temporary restraining order against the Secretary of State pending a resolution of the issues presented in the complaint filed June 5, 1975. The order was conditioned on plaintiff's application for a hardship driver's license. Plaintiff applied for such license on June 10, 1975, and was issued such a license on July 25, 1975.

Plaintiff's attack on the constitutionality of the statute has three aspects. The main thrust of the attack is directed to the failure of the statute to provide adequate notice and hearing to affected parties prior to suspension or revocation of their driver's licenses. Additionally, plaintiff challenges the statute as unconstitutionally vague in that it fails to establish adequate guidelines to be followed by the Secretary of State in suspension or revocation of licenses pursuant to its provisions. Lastly, the statute allegedly fails to inform the plaintiff of standards used by the Secretary of State for the suspension and revocation of driver's licenses.

Illinois Revised Statutes Ch. 95½ § 6-206(a)(3) provides:

> "(a) The Secretary of State is authorized to suspend or revoke the license or permit of any person without preliminary hearing upon a showing by his records or other sufficient evidence that such person:
>
> . . .
>
> 3. Has been repeatedly involved as a driver in motor vehicle collisions or has been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic, to a degree which indicates lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle or disrespect for the traffic laws and the safety of other persons upon the highway. . . ."

It is patent that the statute authorizes the suspension or revocation of a driver's license without any preliminary hearing.

The Supreme Court has stated unequivocally that driver's licenses, once issued, "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell v. Burson*, 402 U.S. 535, 539 (1971), citing *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and *Goldberg v. Kelly*, 397 U.S. 254 (1970). The question remains as to what procedural due process is required in the instant case.

The defendant contends that this case is distinguishable from *Bell v. Burson, supra.* In *Bell v. Burson*, the State of Georgia suspended the driver's license of an uninsured motorist who was involved in an accident because of his failure to meet the State's financial responsibility requiremet. No hearing was accorded the petitioner on the issue of whether or not he was liable for any damages as a result of the accident. The State's interest in protecting a claimant from the possibility of an unrecoverable judgment was held to be insufficient to justify depriving its citizens their right to due process, in that case defined as the right to a hearing on the issue of fault.

In the instant suit, it is argued, there is no determination of fault made prior to hearing. The only factors entering into the Secretary's decision are the number of convictions on a driver's record, each conviction obtained after opportunity was afforded plaintiff to contest same. This argument is based on the regulations promulgated by the Secretary, which provide that:

> "A person repeatedly involved in collisions or convictions to a degree which indicates the lack of ability to exercise ordinary and reasonable care in the safe operation of a motor vehicle, or whose record indicates disrespect for traffic laws and the safety of other persons on the highway, and who has accumulated sufficient points to warrant a second suspension within a 5-year period, may either be suspended or revoked by the Secretary of State, based on the number of points[1] in his record. A person who has been suspended thrice in a ten-year period shall be revoked."

Defendant maintains that the action of the Secretary is automatic under these guidelines and that a hearing is unnecessary to determine fault. The only purpose to be served by a hearing would be the authentication of the record or of the identity of the driver.

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[1] A system of assigning points to various violations has been prescribed by the Secretary in the regulations.

Assuming, as defendant suggests, that the plaintiff had adequate time to contest the authenticity of his record, he has still been denied procedural due process. The statute allows the Secretary a great deal of discretion in taking the action he deems necessary to protect the public from unsafe drivers. Furthermore, neither the statute nor the regulation provides that suspension or revocation of a license follows automatically from conviction of a given number of traffic offenses of certain types. The statute makes suspension or revocation dependent on a determination of whether the driver's repeated involvement in collisions or conviction of offenses indicates lack of ability to use due care or disrespect for the traffic laws and the safety of others. The regulation makes suspension or revocation dependent *both* on such a determination *and* the accumulation of a given number of points, and even then the Secretary "may" but is not required to suspend or revoke the driver's license. Only when a driver has been suspended thrice in a ten-year period is the Secretary's action made mandatory.[2] Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulation sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked.

The defendant argues further that *Bell v. Burson* is distinguishable in that the governmental interest protected by the statute in issue in that case was inferior to

[2] In the instant case, had plaintiff's license been suspended instead of revoked, he would have then been subject to the mandatory revocation provision. Since a suspension requires the same due process safeguards as does a revocation, the defendant's elimination of a step in the revocation process is immaterial to the ultimate determination of the issues in this case.

that in the instant case. In the instant case, the state's interest is "the protection of the public health and safety on its highways." We agree with our brothers in the Western District of Pennsylvania that this "legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver." *Reese v. Kassab*, 334 F.Supp. 744 (1971). However, we also agree with their ultimate conclusion that in pursuing this interest the state must also accommodate the individual's right to procedural due process.

Finally, we disagree with the defendant's argument that this is an "emergency situation" specifically excepted from the holding in *Bell v. Burson*. As an indication that this is not such an emergency situation, we point out that in at least one situation where suspension or revocation is allowed, the state furnishes a hearing before taking such action. Ill.Rev.Stat. Ch. 95½ § 6-206(a)(17). Furthermore, under Ill.Rev.Stat. Ch. 95½ § 6-205, which mandates revocation for certain offenses, such as manslaughter or driving while intoxicated, the revocation is effected only after conviction of the underlying offense.[3] A fault determination being the only distinguishing characteristic of § 6-205, it follows that, in view of the state's regulatory scheme, no emergency situation exists in this case.

In further contravention of the defendant's argument that an "emergency situation" exists is the length of time involved in the instant case between plaintiff's final conviction and his ultimate revocation. Even taking the defendant's position that the conviction was not finalized until 30 days had transpired, a period of almost a month elapsed before plaintiff was sent his notice of revocation. This period of time, while not extreme, affords ample opportunity for a hearing.

[3] The counterargument of defendant that a hearing on the issue of fault is necessary before mandatory revocation under § 6-205, whereas no fault determination need be made under § 6-206(a)(3), has been discussed previously.

We therefore conclude that the practice of the Secretary of State whereby operator's licenses are suspended or revoked under Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes is unconstitutional by virtue of its failure to provide the affected party notice and adequate opportunity to be heard.

In view of our holding on the issue of procedural due process, we need not reach the issue of the substantive unconstitutionality of the Act in question.

Accordingly, plaintiff's motion for summary judgment is granted as to Count I of the complaint. Count II is rendered moot by this decision.

ENTER:

/s/ Philip W. Tone
Philip W. Tone, Judge
United States Court of Appeals

/s/ Richard W. McLaren
Richard W. McLaren, Judge
United States District Court

/s/ Frank J. McGarr
Frank J. McGarr, Judge
United States District Court

DATED: January 20, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DENNIS N. LOVE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICHAEL J. HOWLETT, Secretary of the State of Illinois, in his official capacity,

Defendant.

No. 75 C 1821

ORDER

This cause coming on to be heard on the motion of the defendant Michael J. Howlett, Secretary of State of Illinois, taken as a motion for summary judgment and the cross motion of the plaintiff for summary judgment, and the Court having considered the plaintiff's complaint and all motions and memoranda filed by the parties, and the Court having made and filed its findings of facts and its conclusion of law that 95½ § 6-206(a)(3) of the Illinois Revised Statutes is unconstitutional, all as set forth in the Court's Memorandum Opinion of January 20, 1976,

IT IS ORDERED, that the defendant Secretary of State, his agents, servants, employees, attorneys, and all persons in active concert and participation with them be and are hereby restrained and enjoined from enforcing Chapter 95½ § 6-206(a)(3) of the Illinois Revised Statutes.

ENTER:

/s/ Frank J. McGarr

/s/ Philip W. Tone

DATED: January 20, 1976

SUPREME COURT OF THE UNITED States

No. 75-1513

MICHAEL J. HOWLETT, Secretary of State of Illinois,
Appellant,

v.

DENNIS N. LOVE, etc.

APPEAL from the United States District Court
for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 4, 1976